

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 579 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

YUSUF @ TAKO DADMOHMOD

Versus

STATE OF GUJARAT

Appearance:

MS RV ACHARYA with MR.G.RAMKRISHNAN for Petitioner
PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 20/04/98

ORAL JUDGEMENT

One Kishorebhai Keshavlal Sindhi started on a scooter ride from his residence in the locality known as Gebhansa Road in Junagadh at about 9'O'clock at night on 30.5.92 and when he reached near the dispensary of Dr.Anilbhai Doshi, the accused Yusuf Dad Mohammed (appellant herein) stopped the said Kishorebhai Keshavlal by showing a knife to him, occupied the pillion of the scooter and asked Kishorebhai at the point of knife to

take the scooter towards the railway station. Kishorebhai halted his scooter near a pan cabin located near Bugadha school. The accused asked Kishorebhai why he had halted the scooter, started abusing him and again at the say of the accused said Kishorebhai started his scooter for his onward ride. Accordingly when they reached the dispensary of one Ganubhai located in Jagmal Chowk once again Kishorebhai halted his scooter and once again he was required to proceed further. When they reached Adinath Apartments, the accused made Kishorebhai to stop the scooter at the point of knife. He then demanded Rs.5000/- for his use and upon Kishorebhai refusing to pay the amount the accused told him that he was facing his death. Kishorebhai tried to get down from the scooter and at that point of time the accused gave one blow of knife on the right side of his abdomen and before Kishorebhai could react he gave another blow on to Kishorebhai's chest and third blow on the neck of Kishorebhai. Kishorebhai in the process of resisting the assault caught hold of the hand of the accused and was successful in snatching away the knife. Kishorebhai also shouted for help with the result that one Shyamlal Vidram having his rationing shop in the vicinity of the place of the incident and one Jayantibhai Himatlal rushed to the scene of the offence and the accused escaped. Kishorebhai informed both the aforesaid witnesses about the accused having injured him and pointed at the accused who was then running away. In the meantime Jayantibhai gave support to Kishorebhai and Shyamlal went for closing his shop. Jayantibhai and Kishorebhai with the help of Jayantibhai went near the dispensary of Dr.Ganubhai and set on the steps of the dispensary. Jayantibhai had taken the knife from the hands of Kishorebhai and placed it near the steps of the dispensary. He then stopped one auto-rikshaw passing by that place and had taken injured Kishorebhai to Junagadh Civil Hospital for treatment. The aforesaid Shyamlal Vidhram reached the hospital after closing his shop. In the mean time Junagadh City Police Station Officer having been informed about Kishorebhai having been admitted in the Junagadh Civil Hospital reached the hospital and lodged the recorded given by Shyamlal Vidhram. After treatment was given to Kishorebhai at Junagadh Civil Hospital he was referred for further treatment to Ashok Gandhia Hospital at Rajkot. Police Inspector Mr.J.J.Barad who had recorded the complaint investigated in the matter and ultimately filed chargesheet for the offence punishable under Section 307, 387 and 74 of the Indian Penal Code (for short 'IPC) read with Section 135 of the Bombay Police Act. After the case was committed to the Sessions Court, the accused (appellant herein) stood charged with the

offences punishable under Section 341, 398 and 307 of the IPC as also section 135 read with Section 33(1)(e) of the Bombay Police Act. The accused pleaded not guilty to the charges and faced trial before the learned Additional Sessions Judge, Junagadh. After his statement under section 313 of the Code of Criminal Procedure, 1973(2 of 1974) was recorded and after the arguments of both the sides were heard the accused came to be convicted of the offence punishable under Section 398, 307 and 341 of the IPC and sentenced to undergo rigorous imprisonment for a period of seven years and to pay fine of Rs.5000/- for the offence punishable under Section 398 of the IPC and rigorous imprisonment for a period of 7 years and to pay fine of Rs.500/- for the offence punishable under Section 307 of the IPC. The default sentence that was imposed by the learned Additional Sessions Judge was for a period of 3 months on both the counts. He was further sentenced to undergo simple imprisonment for a period of 1 month and to pay fine of RS.50/- in default to undergo simple imprisonment for a period of 7 days for the offence punishable under Section 341 of the IPC. The substantive sentence was directed to run concurrently. It is this judgement and order dated 5.2.94 rendered in Sessions Case No.155 of 1992 by the learned Additional Sessions Judge, Junagadh, that has been subjected to challenge before this court in this appeal.

2. I have heard the learned advocate appearing for the appellant and Mr.S.P.Dave, Learned APP for the State. Mr.Ramakrishnan appearing for the accused read before me the evidence which has been placed on record. According to his submission injured witness Kishorebhai Keshavlal has not been corroborated in material respects by the other witnesses. Hence the accused must get benefit of doubt with regard to his involvement in the incident in question. For the purpose of appreciating the submissions made by Mr.Ramkrishnan it would be appropriate to deal with the prosecution evidence in brief.

3. PW4 Kishorebhai Keshavlal Exh.10 has testified to the facts of the prosecution case as noted herein above. It is no doubt true that he has not been able to stick to the order of blows which he earlier narrated. He has deposed that upon his refusing to pay the money demanded by the accused, the accused gave a blow of knife on his chest, then there was resistance on the part of Kishorebhai and during the course of such resistance the accused gave second blow on the throat of the accused, the third blow landed on the stomach of Kishorebhai. Now at that point of time Kishorebhai was successful in

snatching away the knife from the hands of the accused. The change of the order of giving of blows by the accused to Kishorebhai will not have any adverse consequence on the prosecution story stated by witness Kishorebhai. It is not in dispute that Kishorebhai came to be injured during the course of incident in question. The medical evidence which is placed on record in the form of oral testimony of Dr.Ghansyam Joshi PW7 and the medical case papers appearing at Exh.8 clearly corroborate the version of the injured witness Kishorebhai with regard to the injuries he sustained. It is no doubt true that ultimately the injuries have not proved to be fatal. At the same time medical evidence clearly indicates that the blows were given on the vital parts of the body of Kishorebhai. That is a very important circumstance which ultimately weighed with the learned Additional Sessions Judge in rendering conviction under the aforesaid provisions of the IPC. Even with regard to identification of the accused there is no manner of doubt left from the prosecution evidence. The accused was known to Kishorebhai as well to other witnesses. He was inhabitant of the said locality. Therefore simply because it was 9'o' clock at night when the incident had taken place and simply because it has appeared in the evidence that there was some darkness it cannot be assumed that Kishorebhai has been falsely implicating the accused in so far as the incident in question is concerned. As such there has been no enmity between Kishorebhai and the accused. Only incident which occurred was that of demanding money about a couple of days prior to the day of the incident. Even on that occasion Kishorebhai refused to accede to the demand of money made by the accused. Hence in so far as the identification of accused is concerned there is no manner of doubt about Kishorebhai having clearly identified the accused during the course of incident. As a matter of fact there was a considerable passage of time and interaction including exchange of words between the accused and the injured witness. There was also altercation between the two. Thus it can hardly be assumed that injured witness Kishorebhai had no occasion to spot the accused and identify him.

4. PW1 Shyamlal Vidharam, the complainant came to be examined at Exh.6 before the learned Additional Sessions Judge. Although he turned hostile on a particular aspect of the prosecution case he has corroborated the injured witness Kishorebhai in material respect. He did not support the prosecution only with record to whether his complaint was recorded or not. At that point of time he was shown the complaint Exh.5/14 and he deposed that his

signature was obtained on a blank piece of paper; that is how there was a cause for the prosecution to pray for cross-examining him. On his such cross-examination he was confronted with further facts with regard to the prosecution case as set out by him in the complaint. Even in the cross-examination by the defence he has admitted that he and Jayantibhai had gone to the place of the incident and Kishorebhai informed him as well as Jayantibhai that he should be taken in a dispensary/hospital and Jayantibhai had taken him to the hospital whereas he had gone for closing his shop. It would therefore be clear that even this witness has in material respect supported the injured witness Kishorebhai Keshavlal although he has been declared hostile with regard to Kishorebhai having pointed out the accused who was seen soon after the incident running when Shyamlal and Jayantilal reached the place of the incident. Same would be the position with regard to the evidence of Jayantilal Himmatlal PW3 Exh.9. This witness has further corroborated the injured witness Kishorebhai but he has not supported the prosecution story with regard to how Kishorebhai came to be injured during the course of the incident in question. He was confronted with his earlier statement before the Police with regard to the subsequent facts in respect which he did not support the prosecution in his examination in chief. However, what is important to be noticed from the evidence of this witness as well as witness Shyamlal is that they had the occasion to rush to the place of the incident upon hearing the shouts from Kishorebhai and finding Kishorebhai in a injured and bleeding condition. Both of the witnesses have supported Kishorebhai with regard to Kishorebhai having been taken to the Junagadh Civil Hospital by witness Jayantibhai whereas witness Shyamlal had gone for closing his shop and then had gone to the hospital.

5. Then there is evidence of Investigating Officer, Jaysingh Jodhabhai Barad PW10 Exh.28 who has supported the prosecution case in all material respects with regard to the facts which were disclosed before him.

6. Having gone through the reasons given by the learned Additional Sessions Judge for rendering the conviction and sentence and having heard the learned Advocate appearing for the accused as well as Learned APP for the State I am of the opinion that this is not a fit case in which it could be found on reassessment of the evidence that the accused was falsely implicated by the prosecution. Hence in the facts and circumstances of the case this appeal deserves to be dismissed.

7. Following order is therefore passed:

This appeal is hereby dismissed.

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